IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.983 of 1980
WITH
FIRST APPEAL No.991 of 1980
WITH
FIRST APPEAL No.1061 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT, THROUGH COLLECTOR

Versus

JAI GOPAL BHAGWANDAS AGRAWAL

Appearance:

MR KG SHETH AGP for Appellant No.1

MR VH DIXIT for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 08/10/2002

COMMON JUDGEMENT

1. These three appeals were ordered to be heard

together, since a common question of law arises, namely, whether Section 202 of the Bombay Land Revenue Code stood repealed in light of the repealing Section 19 of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

2. First Appeal No.983 of 1980 is directed against the judgment and decree dated 13.03.1980 passed by the learned City Civil Judge, Court No.15 in Civil Suit No.3656 of 1976, First Appeal No.991 of 1980 against the judgement and decree dated 27.02.1980 passed in Civil Suit No.2910 of 1976 and First Appeal No.1061 of 1980 against the judgement and decree dated 27.02.1980 passed in Civil Suit No.2911 of 1976.

3. In all the three suits notice of eviction issued by the Dy. Collector, Ahmedabad under Section 202 of the Bombay Land Revenue Code, 1979 was challenged and a declaration was sought that it was illegal, invalid, ultra vires and without jurisdiction. All the three suits were decided by the same learned Judge and after coming to the conclusion that Section 202 of the Code stood repealed in view of the provision of Section 19 of the Public Premises Act he held that the notice issued under Section 202 cannot be sustained in law. The learned Judge, therefore, decreed all the three suits and granted the declaration as prayed for. The State of Gujarat has, therefore, filed these appeals challenging the decree passed in the three suits. It appears that learned trial Judge also decreed Civil Suit No.2749 of 1976 on the same ground. The State had preferred First Appeal No.960 of 1980 against the said decree. The present three appeals were ordered to be heard with First Appeal No.960 of 1980. However, the said appeal came to be decided separately in State Vs. Surabhai Mafatbhai (23(2) G.L.R. 596) and B.K.Mehta,J held that the learned City Civil Judge was in error in holding that Section 202 of the Code stood repealed by the provisions contained in Section 19 of the Public Premises Act.

4. In view of the said decision, the view taken by the learned trial Judge that Section 202 stood repealed by Section 19 of the Public Premises Act cannot be upheld. The learned judge has granted the decree on this short ground only. The appeals are, therefore, allowed and in each appeal, the judgement and decree of the trial Court is set aside. The matter shall, therefore, go back to the City Civil Court, Ahmedabad which will dispose of the matter on other issues, after giving opportunity to the parties to adduce evidence in support of their rival contentions, that might have been raised, or that may be

required to be raised in light of the pleadings of the parties. No order as to costs. Sd/-

[M.C.PATEL, J]

'Bhavesh'